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California Health and Welfare Trust Fund, et al.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DISTRICT COUNCIL 16 NORTHERN
CALIFORNIA HEALTH AND WELFARE
TRUST FUND; and its JOINT BOARD OF
TRUSTEES; CHRIS CHRISTOPHERSEN and
JOHN MAGGIORE, Trustees;

BAY AREA PAINTERS AND TAPERS PENSION
TRUST FUND, and its JOINT BOARD OF
TRUSTEES; CHRIS CHRISTOPHERSEN and
MARIAN BOURBOULIS, Trustees;

DISTRICT COUNCIL 16 NORTHERN
CALIFORNIA JOURNEYMAN AND
APPRENTICE TRAINING TRUST FUND, and its
JOINT BOARD OF TRUSTEES; CHRIS
CHRISTOPHERSEN and MARIAN
BOURBOULIS, Trustees; and

DISTRICT COUNCIL 16 OF THE
INTERNATIONAL UNION OF PAINTERS AND
ALLIED TRADES,

Plaintiffs,

v.

PETE CHACON CONSTRUCTION, INC., a
dissolved California corporation;

and VANESSA CHACON, an individual.

Defendant(s).

Case No.

COMPLAINT

Parties

1. The District Council 16 Northern California Health and Welfare Trust Fund (“Health Fund”); Bay Area Painters and Tapers Pension Trust Fund, including the Bay Area Painters and Tapers Pension Trust Fund Annuity Plan (together “Pension Funds”); and District Council 16 Northern California Journeyman and Apprentice Training Trust Fund (“Apprentice Fund”) are employee benefit plans as defined in the Employee Retirement Income Security Act of 1974 (“ERISA”) § 3(3), 29 U.S.C. § 1002(3). The Joint Board of Trustees (“Trustees”) of said Funds are the named fiduciaries of the Funds under ERISA § 302(a), 29 U.S.C. § 1002(a). Chris Christophersen and John Maggiore are Trustees and fiduciaries of the Health Fund. Chris Christophersen and Marian Bourboulis are Trustees and fiduciaries of the Pension Fund and Apprentice Fund. The Health Fund, Pension Funds, Apprentice Fund, and their respective Trustees and fiduciaries are collectively referred to herein as “ERISA Plaintiffs” or “Plaintiffs.”

2. District Council No. 16 of the International Union of Painters and Allied Trades (“Union”) is a labor organization as defined in § 2(5) of the National Labor Relations Act (“NLRA”), 29 U.S.C. § 152(5) and is represented by counsel herein for the limited purpose of collecting union dues owing as part of the subject contribution claims of ERISA Plaintiffs, and not for any other cause of action. The Union expressly reserves its rights to pursue any other cause of action on its own behalf.

3. Defendant Pete Chacon Construction, Inc. (“Pete Chacon”), a California corporation, and Vanessa Chacon, an individual (hereinafter collectively “Defendants”) are employers by virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).

4. Defendant Vanessa Chacon, an individual, executed the Agreement of Employers Regarding Bay Area Painters and Tapers Trust Funds wherein she agreed to be personally and individually liable for Pete Chacon’s contributions required by the Collective Bargaining Agreement, as described below.

Jurisdiction

5. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by virtue of ERISA § 502, 29 U.S.C. § 1132, in that ERISA Plaintiffs seek to enforce the provisions of ERISA and the terms of their plans, seek to enjoin the acts and practices which violate ERISA, seek equitable relief

1 to redress such violations, and seek all other appropriate relief under ERISA.

2 6. Jurisdiction exists in this Court over all the claims by virtue of the Labor Management
3 Relations Act (“LMRA”) § 301, 29 U.S.C. § 185, in that Plaintiffs seek to enforce the terms and
4 conditions of a valid Bargaining Agreement.

5 7. To the extent jurisdiction over any claim does not exist under ERISA or the LMRA,
6 supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. § 1367 in that they
7 arise out of a common nucleus of operative facts that form the basis of the federal claims asserted
8 herein, each of which has a substantial ground in federal jurisdiction.

9 Venue

10 8. Venue is conferred upon this Court by § 502, 29 U.S.C. § 1132. Where an action is
11 brought under ERISA § 502 in a district court of the United States, it may be brought at Plaintiffs’
12 discretion, in the district where the plan is administered, where the breach took place, or where a
13 defendant resides or may be found. ERISA Plaintiffs’ Trust Funds are administered in this district at
14 their principal place of business in Alameda, California. Thus, jurisdiction and venue are properly
15 grounded with this Court.

16 9. Venue exists in this Court with respect to the claims under LMRA § 301, 29 U.S.C. §
17 185, as this Court has jurisdiction over the parties, as the Union maintains its principal place of business
18 in this district, its duly authorized officers or agents are engaged in representing employee members in
19 this district, and the claims arise in this district.

20 Intradistrict Assignment

21 10. The basis for assignment of this action to this Court’s Oakland Division is that all of the
22 events and omissions giving rise to Plaintiffs’ claims occurred in the County of Alameda, where ERISA
23 Plaintiffs’ Funds and the Bargained Plans are administered, and where Defendant therefore failed to
24 fulfill its statutory and contractual obligations to Plaintiffs.

25 Bargaining Agreement

26 11. Defendant Pete Chacon entered into the Northern California Painters Master Agreement
27 (“Bargaining Agreement”) between the Union and the Northern California Painting and Finishing
28 Contractors Association, requiring employer contributions to Plaintiffs’ ERISA Funds, to the Union for

1 union dues, and to the other plans more fully described in the Bargaining Agreement. Plaintiffs are third
2 party beneficiaries of the Bargaining Agreement.

3 12. Under the terms of the Bargaining Agreement, Plaintiffs' Trustees are authorized to
4 collect monies due by Defendants to the following plans: the IUPAT Finishing Trades Institute, the
5 IUPAT Labor-Management Cooperation Initiative, the Work Preservation Fund, the Northern California
6 Painting and Finishing Contractors Industry Fund, the Skills, Safety, Supervisor & Survival Training
7 Awards Recognition (STAR) Program, Inc., the Vacation/Holiday Fund, and the IUPAT Political Action
8 Together-Political Committee (collectively referred to herein as the "Bargained Plans").

9 13. Under the Bargaining Agreement and the governing documents of ERISA Plaintiffs (the
10 "Trust Agreements"), which are incorporated into the Bargaining Agreement and made binding on
11 Defendants, Defendants are required to regularly pay to ERISA Plaintiffs, the Bargained Plans, and the
12 Union, certain sums of money, the amounts of which are determined by the hours worked by Defendant
13 Pete Chacon's employees. Contributions are due on the fifteenth (15th) day of the month following the
14 month hours were worked, and considered delinquent if not received by the last day of that month.
15 Defendants are also required, pursuant to the Bargaining and Trust Agreements, to pay liquidated
16 damages in the amount of ten percent (10%) for each delinquent contribution, but in the amount of
17 twenty percent (20%) for each delinquent contribution which is the subject of litigation. Moreover, the
18 Bargaining and Trust Agreements provide that interest accrues on delinquent contributions at the rates
19 reasonably set by the Trustees from the day contributions become delinquent, which is the first (1st) day
20 of the month following the month in which payment was due, until paid.

21 14. The Bargaining Agreement further requires Defendant Pete Chacon to maintain time
22 records or time cards, and to submit any and all relevant records to Plaintiffs for examination to
23 determine whether Defendants are making full and prompt payment of all sums required to be paid by
24 them to Plaintiffs. Should an audit of Defendant Pete Chacon's records reveal Defendants have failed to
25 provide full and prompt payment of all sums due, Defendants must reimburse Plaintiffs for the amounts
26 due, including audit fees, in addition to any other obligations pursuant to the Bargaining and Trust
27 Agreements.
28

Factual Allegations

15. Defendants have failed and refused to pay amounts found due to Plaintiffs as a result of an audit of Defendant Pete Chacon's payroll records for the period from September 1, 2012 through August 31, 2016. Liquidated damages and interest have been incurred and are owed to Plaintiffs for the unpaid contributions for that period.

16. Plaintiffs are also entitled to recover any and all other contributions, and all liquidated damages and interest on delinquent contributions not specified above, found due on timecards, further audit, or otherwise, including estimated contributions for any months Defendant Pete Chacon failed to report to Plaintiffs, through the time of Judgment through the time of Judgment. Plaintiffs reserve the right to conduct a further audit to determine whether there are any additional amounts due from Defendants.

**FIRST CAUSE OF ACTION
For Payment of Delinquent Contributions, Interest, Liquidated Damages, Attorneys' Fees
and Costs Against Defendant**

17. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 16, above.

18. Defendants have a contractual duty to timely pay the required contributions to Plaintiffs and the Bargained Plans, and to timely pay dues to the Union, pursuant to the Bargaining Agreement and Trust Agreements. Defendants also have a contractual duty under the Bargaining Agreement, and Trust Agreements incorporated therein, to permit an audit of Defendant Pete Chacon's records to determine whether Defendants are making full and prompt payment of all sums required to be paid by it to Plaintiffs, and to pay Plaintiffs all amounts found due as a result of an audit, including audit fees.

19. In addition, Defendants have a statutory duty to timely make the required payments to Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

20. By failing to make the required payments to Plaintiffs, Defendants breached the Bargaining Agreement and are in violation of ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a). Defendants' failure and refusal to pay the required contributions was at all times, and still is, willful. Defendants continue to breach the Bargaining Agreement, and incorporated Trust Agreements, by failing to pay all amounts owed as alleged. Said refusal is unjustified and done with knowledge and intent.

21. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing and irreparable injury, loss and damage unless Defendants are ordered specifically to perform all obligations required on Defendants' part to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the LMRA, 29 U.S.C. §§ 141-197, and the Bargaining and Trust Agreements, and are restrained from continuing to refuse to perform as required thereunder.

22. This Court is authorized to issue injunctive relief based on the traditional standard. As set forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the possibility that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The balance of hardships and advancement of public interest favor ERISA Plaintiffs.

23. This Complaint does not in any manner relate to statutory withdrawal liability that may or may not be assessed against Defendants. ERISA Plaintiffs expressly reserve the right to pursue any such withdrawal liability claims against Defendants as provided by ERISA Plaintiffs' Plan Documents, Trust Agreements, and the law.

Prayer

WHEREFORE, Plaintiffs pray as follows:

1. For a judgment against Defendants as follows:

(a) Any unpaid contributions, due at time of Judgment, including those specified above as well as any other contributions determined as due by audit, timecards, or otherwise, including estimated contributions for any months Defendants fail to report to Plaintiffs, pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

i. To ERISA Plaintiffs and the Bargained Plans, in accordance with ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreement;

ii. To the Union in accordance with the Bargaining Agreement.

(b) Liquidated damages on all late-paid and unpaid contributions in an amount provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs, ERISA § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

(c) Interest on all late-paid and unpaid contributions at the rates set in accordance with the Bargaining Agreement, the Trust Agreements, and ERISA § 502(g)(2)(B), 29 U.S.C. § 1132

1 (g)(2)(B).

2 2. Plaintiffs' reasonable attorneys' fees and costs of this action, including audit fees, in
3 accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and in accordance
4 with the Bargaining Agreement for all Bargained Plans; and with LMRA § 301, 29 U.S.C. § 185, for all
5 Plaintiffs.

6 3. For an order,

7 (a) requiring that Defendants comply with their obligations to Plaintiffs under the
8 terms of the Bargaining Agreement and the Trust Agreements;

9 (b) enjoining Defendants from violating the terms of those documents and of ERISA;
10 and;

11 (c) enjoining Defendants from disposing of any assets until said terms have been
12 complied with, and from continuation or operating of Defendants' business until said terms have been
13 complied with.

14 4. That the Court retain jurisdiction of this case pending compliance with its orders.

15 5. For such other and further relief as the Court may deem just and proper.

16
17 DATED: November 21, 2016

SALTZMAN & JOHNSON LAW CORPORATION

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19 By: /S/

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California Health and Welfare Trust Fund, et al.